IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1171 OF 2007
IN
SUIT NO.1220 OF 1986

Sukh Niwas Co-operative Housing Society Ltd & Ors. ...Plaintiffs

Versus

Mehal Singh Ram Singh & Ors. ...Defendants

Ms Suvarna P. Joshi for the Plaintiff in support of Notice of Motion.

Shri Chirag Shah i/by Sunil Rawal for the Defendant No.3.

CORAM : ABHAY S.OKA, J.
DATED : JULY 18, 2007.

P.C.:

1. The learned counsel appearing for the Plaintiff in support of the Notice of Motion states that the first Defendant is already dead and the Plaintiffs are not pressing this Notice of Motion as against the Defendant Nos.2, 4 and 6. The Defendant Nos.3 and 5 are served and the Defendant No.3 is represented by an Advocate.

2. The first prayer in the Notice of Motion is for restoration of the suit which is dismissed under Rule 3 of Order IX of the Code of Civil Procedure, 1908. In view of the averments made in the affidavit in support, the suit deserves to be restored as against the Defendant nos.3 and 6 by condoning the delay in taking

out this Notice of Motion. Prayer (c) in the Notice of Motion reads thus:

> "(c) That the Plaintiffs be directed and/or allowed to continue the proceedings, being the Complainant in Complaint No.375 of 2005 filed by them before the Hon'ble Dispute Redressal Forum at Bandra, Mumbai, as Plaintiffs herein, as against the Defendant Nos.1 to 4 herein and their other legal heirs as the opposite parties therein, already filed by them, and an additional remedy persued under section 3 of Consumer Protection Act, 1986 before the Hon'ble Consumer Dispute Redressal.

3. It is obvious from the aforesaid prayer that the same is misconceived and cannot be granted by this Court. Hence, Notice of Motion is disposed of by passing following order:

(i) The Notice of Motion is made absolute in terms of prayer clauses (a) and (b). It is made clear that the suit stands restored only as against the Defendant Nos.3 and 5 and order of dismissal

passed against rest of the Defendants stands confirmed.

(ii) Prayer clause (c) of the Notice of Motion is rejected. However, rejection of this prayer clause will not affect proceedings pending before the Consumer Dispute Redressal Forum, if any.

(iii) No orders as to costs.

JUDGE